

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date October 19, 2005

Division: County Attorney

Bulk Item: Yes ☐ No ☒

Staff Contact Person: Natileene W. Cassel

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**AGENDA ITEM WORDING:**

This is the First Addendum to the Interlocal Agreement with the City of Marathon. It will enable the City to use funds, originally assigned to repair of the Boot Key Bridge, for road maintenance as well as bridge repair.

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**ITEM BACKGROUND:**

May 16, 2001, the City of Marathon and Monroe County entered into a Memorandum of Understanding in which the City agreed to accept ownership of the Boot Key Bridge conditioned upon the County agreeing to pay up to \$1,000,000.00 for the necessary repairs to the Boot Key Bridge.

January 15, 2003, the County and the City entered into an Interlocal Agreement in which the County agreed to pay up to \$956,400.00 for the necessary repairs to the Boot Key Bridge.

The City of Marathon requested and the County agreed to change the Interlocal Agreement to allow the City to use the money for maintenance of the roads within the City as well as for bridge rehabilitation, approval for this addendum was given by the County on September 17, 2003. No Addendum was prepared at that time.

This First Addendum to the Interlocal Agreement is being submitted to the City of Marathon on October 11, 2005 and it is anticipated that it will be approved and signed.

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**PREVIOUS RELEVANT BOCC ACTION:**

The BOCC has approved taking the limitations off the Interlocal Agreement with the City of Marathon to use the monies for roads.

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**CONTRACT/AGREEMENT CHANGES**

This addendum is the written confirmation of the BOCC's approval to remove restriction on the use of the monies by the City.

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**STAFF RECOMMENDATIONS:** Approval

**TOTAL COST:** \$956,400.00

**BUDGETED:** YES ☒ NO ☐

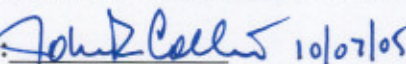
Originally Budgeted 2002-2003 funds available

**COST TO COUNTY: APPROX.** \$956,400.00 **SOURCE OF FUNDS:** Gas Tax

**REVENUE PRODUCING:** YES ☐ NO ☒ Amount Per Month: paid by submission of invoice

**APPROVED BY:** County Atty ☒ OMB/Purchasing ☐ Risk Management ☐

**DIVISION DIRECTOR APPROVAL:**

  
John R. Collins

**DOCUMENTATION:** Included ☒ Not Required ☐

**DISPOSITION:** \_\_\_\_\_ **AGENDA Item#** \_\_\_\_\_



**ADDENDUM TO  
INTERLOCAL AGREEMENT FOR THE REHABILITATION  
OF THE BOOT KEY HARBOR BRIDGE**

THIS FIRST ADDENDUM to the Interlocal Agreement for the Rehabilitation of the Boot Key Harbor Bridge dated the \_\_\_\_ day of \_\_\_\_\_ 2005 is entered into pursuant to Sec. 163.01, FS, by and between the City of Marathon (City), a Florida municipal corporation whose address is 10045-55 Overseas Highway, Marathon, FL 33050; and Monroe County (County), a political subdivision of the State of Florida, whose address is Gato Building, 1100 Simonton Street, Key West, FL 33040.

**WITNESSETH:**

WHEREAS, on May 16, 2001, the City and the County entered into a Memorandum of Understanding in which the County agreed to convey the Boot Key Bridge to the City; and the County agreed to pay up to \$1,000,000.00 for the necessary repairs to the Boot Key Bridge; and

WHEREAS, on January 15, 2003, the County and the City entered into an Interlocal Agreement in which the County agreed to pay up to \$956,400.00 for the necessary repairs to the Boot Key Bridge; and

WHEREAS, the City has requested and the County has agreed to change the Interlocal Agreement to allow the City to use the allotted sum for maintenance and repair of the roads within the City as well as for bridge rehabilitation; and

WHEREAS, on September 17, 2003, the Board of County Commissioners voted to delete the restrictions on the expenditures set forth in the Interlocal Agreement in order to allow the monies to also be used by the City for road maintenance;

NOW THEREFORE IN CONSIDERATION of the mutual promises contained herein, the parties hereby agree as follows:

1. Section 2. a. of the Interlocal Agreement dated January 15, 2003, shall be amended by adding the following sentence:
  - a. Effective September 17, 2003, the City may also perform the necessary services to maintain and repair the roads in the City; and the allocation of the funds as stated in Exhibit A no longer apply.
2. Section 3.d. of the Interlocal Agreement dated January 15, 2003, shall be amended by adding the following sentence:
  - d. Effective September 17, 2003, the restrictions on how the \$956,400.00 is divided shall not apply in order to enable the City to allocate the funds to be used as necessary for bridge rehabilitation and for maintenance of



roads in the City; and the allocation of the funds as stated in Exhibit A no longer apply.

3. The remaining terms of the Interlocal Agreement entered into on May 16, 2001, not inconsistent herewith shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in their respective names.

Attest: DANNY L. KOLHAGE, CLERK

By: \_\_\_\_\_  
Deputy Clerk

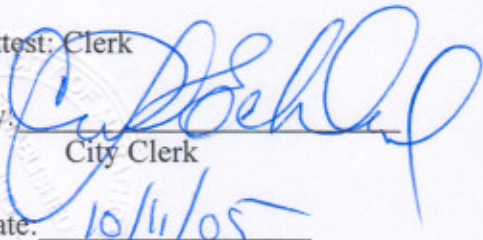
Date: \_\_\_\_\_

BOARD OF COUNTY  
COMMISSIONERS OF MONROE  
COUNTY, FLORIDA

By: \_\_\_\_\_  
Mayor/Chairman

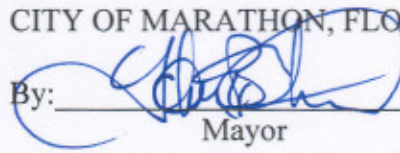
(SEAL)

Attest: Clerk

By:  \_\_\_\_\_  
City Clerk

Date: 10/11/05

CITY OF MARATHON, FLORIDA

By:  \_\_\_\_\_  
Mayor

By:  \_\_\_\_\_  
City Attorney



Board granted approval to remove the restrictions for the funds set aside for the Boot Key Harbor Bridge repairs for the City of Marathon.

Board adopted the following Resolution approving the wavier of the minor conditional use fees for the park and construction of a pavilion to be used as a bus stop for the children of Habitat Landings.

**RESOLUTION NO. 384-2003**

Said Resolution is incorporated herein by reference.

**COUNTY CLERK**

Board approved the following Warrants (205667-205808 & 88543-89719 & 2367-2436):

**General Fund (001)**, in the amount of \$654,255.02; **Sup to General Revenue (002)**, in the amount of \$6,444.79; **Fine & Forfeiture Fund (101)**, in the amount of \$2,617,711.11; **Road and Bridge Fund (102)**, in the amount of \$110,692.55; **Law Library Fund (103)**, in the amount of \$3,118.50; **TDC District Two Penny (115)**, in the amount of \$115,967.61; **TDC Admin. & Promo 2 Cent (116)**, in the amount of \$138,081.30; **TDC District 1, 3 Cent (117)**, in the amount of \$40,562.86; **TDC District 2, 3 Cent (118)**, in the amount of \$4,820.27; **TDC District 3, 3 Cent (119)**, in the amount of \$20,523.19; **TDC District 4, 3 Cent (120)**, in the amount of \$3,378.89; **TDC District 5, 3 Cent (121)**, in the amount of \$4,158.33; **Gov. Fund Type Grants (125)**, in the amount of \$875,471.43; **Impact Fees Roadways (130)**, in the amount of \$57,613.50; **Impact Fees Libraries (132)**, in the amount of \$12,510.22; **Impact Fees Police Fac (134)**, in the amount of \$109,944.90; **Fire & Amb Dist 1 L&M Keys (141)**, in the amount of \$22,665.73; **Upper Keys Health Care (144)**, in the amount of \$1,305.45; **Fire & Amb Dist 6 Key Largo (146)**, in the amount of \$8,745.61; **Uninc Svc Dist Parks&Rec (147)**, in the amount of \$20,487.41; **Plan, Build, Zoning (148)**, in the amount of \$65,761.86; **Municipal Policing (149)**, in the amount of \$390,746.29; **911 Enhancement Fee (150)**, in the amount of \$13,473.94; **Boating Improvement Fund (157)**, in the amount of \$18,782.00; **Misc. Special Revenue Fund (158)**, in the amount of \$5,760.59; **Law Enforcement Trust (162)**, in the amount of \$19,390.00; **2003 Revenue Bonds (207)**, in the amount of \$2,504.65; **1 Cent Infra Surtax (304)**, in the amount of \$272,620.34; **2003 Revenue Bonds (307)**, in the amount of \$84,617.65; **Card Sound Bridge (401)**, in the amount of \$1,055.74; **Marathon Airport (403)**, in the amount of \$158,326.41; **Key West Intl. Airport (404)**, in the amount of \$238,415.76; **MSD Solid Waste (414)**, in the amount of \$892,280.93; **Worker's Compensation (501)**, in the amount of \$560.75; **Group Insurance Fund (502)**, in the amount of \$124,804.35; **Risk Management Fund (503)**, in the amount of \$30,009.98; **Fleet Management Fund (504)**, in the amount of \$53,206.04.

**FINES & FORFEITURES**

Board approved the following Fines & Forfeiture Expenditures:

**Court Reporter Services**, Amy Landry Reporting, in the amount of \$50.00; Lisa Roeser, in the amount of \$62.50; Suzanne Ex dba All Keys Reporting, in the amount of \$50.00.



**INTERLOCAL AGREEMENT FOR THE  
REHABILITATION OF THE BOOT KEY HARBOR BRIDGE**

THIS INTERLOCAL AGREEMENT (the "Interlocal Agreement") is entered into pursuant to Sec. 163.01, FS, by and between the City of Marathon (City), a Florida municipal corporation whose address is 10045-55 Overseas Highway, Marathon, FL 33050; and Monroe County (County), a political subdivision of the State of Florida, whose address is Gato Building, 1100 Simonton Street, Key West, FL 33040.

**RECITALS**

WHEREAS, the parties previously entered into a Memorandum of Understanding dated May 16, 2001 (the "MOU"); and

WHEREAS, pursuant to the MOU, the City agreed to accept ownership of the Boot Key Bridge (the "Bridge") conditioned upon the County agreeing to pay up to \$1,000,000.00 for repairs to the Bridge; and

WHEREAS, pursuant to the MOU the parties prepared a joint engineering report dated February 22, 2002 (the "Report") to identify necessary repairs of the Bridge; and

WHEREAS, the Report contains an Engineering estimate for rehabilitation costs, estimating the cost of 22 line items at \$630,333, plus a 20% contingency in the sum of \$126,066; and

WHEREAS, Design and other professional services required for the Bridge repair work are estimated to cost \$200,000.

NOW THEREFORE, IN CONSIDERATION of the mutual promises set forth below, the parties agree as follows:

1. This Interlocal Agreement supersedes the one approved by the Board of County Commissioners on September 18, 2002.

2. Project. The City agrees:

a. to perform the necessary services to rehabilitate the Bridge, located within the City, hereafter the Project. The Project includes: professional engineering, design, construction administration and inspection services, preparation of the appropriate procurement documents to bid the rehabilitation work, review of the bids, award of the rehabilitation work and construction services. The Project work is more particularly described in Exhibit "A," which is attached to, and made a part of, this interlocal agreement.

b. The City will be responsible for bidding and selection of the appropriate contractors entering into contracts for the Project and supervising all design, construction administration, inspection services and construction services.

3. Payment. The County agrees to reimburse the City for the Project as follows:

a. Reimbursement is on a monthly basis.

b. To receive payment, the City must submit to the County Engineer, an invoice in the format attached as Exhibit "B," . The invoice must describe the services



performed together with proof that payment has been made to the City's contractor(s) and materialmen.

- c. If the invoice is satisfactory to the County Engineer, he/she shall forward the invoice to the County Clerk for payment. If the County Engineer or County Clerk determine that an invoice contains an error or omission, then the County Engineer or County Clerk (as appropriate) must return the invoice to the City with a written explanation of the error or omission. If the invoice contains no error or omission, then the County shall pay the City within 20 days of the County Engineer's receipt of the invoice. If the invoice is returned for correction, then the payment must be made within 20 days of the date the County official who requested the correction receives the corrected invoice.
- d. The maximum amount the County is obligated to reimburse the City under this Interlocal Agreement is \$956,400.00; provided that this amount shall be further divided as follows: \$200,000.00 for professional engineering, design, bidding, construction administration, and inspection services and \$756,400.00 for the construction costs of the Bridge rehabilitation. The allocation of amounts for the particular construction tasks are set forth in detail in Exhibit A. Those allocations are guidelines, however, and shall be adjusted to reflect the actual amounts of the construction contract(s) entered into by the City.
- e. Before the final payment may be made releases for any and all claims against the City from its contractor(s) and materialmen must also be furnished to the County.

4. Records. The City agrees to keep its financial records pertaining to the Project according to generally accepted accounting principles and to retain such records for three years following the date when the Project is complete. The records must be made available for inspection by an auditor employed by the County Clerk or County during regular business hours (Monday to Friday, 9 AM – 5 PM, holidays excepted). If the auditor determines that County funds paid to the City under this Interlocal Agreement were used for a purpose not authorized by this agreement, then the City must refund the funds improperly spent with interest calculated pursuant to Section 55.03, Florida Statutes, with interest running from the date the County paid the improperly spent funds to the City. This paragraph will survive the completion of Project and the receipt of the final payment by the City.

5. Indemnification. To the extent permitted by Section 768.28, Florida Statutes, the City agrees to indemnify and hold harmless the Board Of County Commissioners, the County, its officers, employees, agents and contractors, from any negligent act(s) or omission(s) of the City, its officers and employees, contractors (in any tier) and materialmen, that occur during, or as a result of, the Project, including any claims by unsuccessful bidders. This paragraph will survive the completion of the Project and the receipt of the final payment by the City.

6. Funding. The parties agree that the County's responsibility under the Agreement is to provide funding only. Accordingly, all design and inspection professionals, Project contractors (in any tier) and materialmen furnishing materials for the Project, are in privity with the City only, may not seek direct payment from the County, and that the County has no duty, liability or other obligation to such persons. The City agrees to include a sentence similar to the foregoing in all contracts entered into by the City for the Project.

7. Applicable Laws. In awarding contracts for the engineering, design, bidding, construction administration, inspection and rehabilitation of the Bridge the City agrees to abide by all applicable City ordinances and state and federal laws.



8. Time Issues. The parties recognize that the City will enter into contractual obligations with third parties in order to perform the services required by this Project and that the County shall be the funding source for a significant portion of the City's cost of the Project. Accordingly, the County and the County Clerk shall timely process all invoices received from the City in accordance with the provisions of Paragraph 2.

9. Notices. All correspondence between the parties made necessary by this interlocal agreement must be in writing and delivered to the following by registered mail, return receipt requested, hand delivery or private postal carrier:

Monroe County  
Dave Koppel, Engineer  
1100 Simonton Street  
Key West, FL 33040

City of Marathon  
City Manager  
10045-55 Overseas Highway  
Marathon, FL 33050

Copy to: City Attorney  
Weiss Serota Helfman  
Pastoriza & Guedes, P.A.  
2665 South Bayshore Drive  
Suite 420  
Miami, FL 33133

10. Term. This Interlocal Agreement shall be effective upon the date of execution by the last party and a copy is filed with the Clerk of the Circuit Court, pursuant to Section 163.05(11), Florida Statutes and shall remain effective until final reimbursement of funds under Paragraph 3(d) is made to the City by the County.

11. Venue/Attorneys' Fees. Venue for any litigation arising under this Interlocal Agreement must be in a court of competent jurisdiction in Monroe County, Florida. In the event of any administrative, trial or appellate litigation arising out of this Agreement, the prevailing party is entitled to costs plus a reasonable attorney's fee from the non-prevailing party.

12. Prior Agreements. The parties agree that this Interlocal Agreement represents the parties' final mutual understanding and replaces any prior agreements concerning the same subject matter whether written or oral. This Interlocal Agreement may only be modified by a writing agreed to by both parties.

13. Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

14. Assignment. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered by either party without the prior written consent of the other party.

15. Amendment. No modification, amendment or alteration in the terms or conditions of this Interlocal Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

16. Survival of Provisions. Any terms or conditions of either this Interlocal Agreement or any subsequent Agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed, and shall be fully enforceable by either party.



17. Default/Termination Remedies.

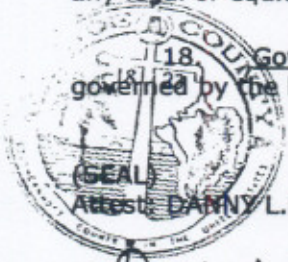
17.1 In the event of a failure to perform or a breach of any obligation of this Interlocal Agreement by either County or City, which failure or breach is not cured within thirty (30) days of written notice thereof, such action shall constitute a default by the party committing said default.

17.2 If and when any default of this Interlocal Agreement occurs, the non-defaulting party may, by 10 days written notice to the defaulting party, terminate this Interlocal Agreement and avail itself of any legal or equitable remedies that may apply, including, but not limited to, injunctive relief, actual damages and specific performance of this Agreement.

17.3 Such remedies may be exercised in the sole discretion of the non-defaulting party.

17.4 Nothing contained in this Agreement shall limit either party from pursuing any legal or equitable remedies that may apply.

18. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.



Attest: DANNY L. KOLHAGE, Clerk

By Daniel C. Desantis  
Deputy Clerk

Date 01-15-03

County Attorney

(SEAL)  
Attest: Clerk

By Katherine V. Selchan  
Katherine Selchan, City Clerk

Date December 11, 2002

WEISS SEROTA HELFMAN  
PASTORIZA & GUEDES, P.A.

City Attorney

jdlaCOMBKHBNE

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By Reggie M. Spahan  
Mayor/Chairperson

2003 MAR -3 PM 3:00  
DANNY L. KOLHAGE  
CLK. CIR. CT.  
MONROE COUNTY, FLA.

FILED FOR RECORD

CITY OF MARATHON, FLORIDA

By John Bartus  
John Bartus, Mayor

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY Robert N. Wolfe  
ROBERT N. WOLFE  
DATE 12-23-02



**MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING** is made and entered into by and between Monroe County, Florida, a political subdivision of the State of Florida (hereinafter referred to as the "County"), and the City of Marathon, Florida, (hereinafter referred to as the "City"), this 16<sup>th</sup> day of MAY, 2001.

**WITNESSETH:**

**WHEREAS**, the City was incorporated on November 30, 1999 pursuant to Chapter 99-427 Florida Statutes, and became operational on February 24, 2000; and

**WHEREAS**, the City and the County have been negotiating transition issues relating to the transfer to the City of certain impact fees, infrastructure and properties which are presently held or owned by the County, and the continued use of the County's transfer station for waste haul-out purposes; and

**WHEREAS**, it is the desire of the City and the County to amicably resolve the issues between them for their mutual benefit and in the best interests of their constituents.

**NOW THEREFORE**, in consideration of the premises and mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the City and the County agree as follows:

**1. Recitals.** The above stated recitals are a true and accurate statement of the intentions of the City and the County and are incorporated as part of this Agreement.

**2. Funds to be Transferred to the City by the County.** The County and the City agree as follows regarding the transfer of certain impact fees and funds which are presently held by the County:

**a. Fire Impact Fees.** The City acknowledges that all Fire Impact due the City prior have been paid by the County and accepted by the City;

**b. Park Impact Fees.** The City acknowledges and agrees that the County expended park funds in excess of the amount collected for park impact fees within the municipal boundaries of the City of Marathon prior to incorporation, and agrees that there are no park impact fees which are owed to the City by the County;



**c. Roadway Impact Fees.** The City and the County agree that the City is owed \$121,332.00 for roadway impact fees collected from within the municipal boundaries of the City and not expended by the County prior to incorporation. It is agreed that this sum shall be applied toward repairs to the Boot Key Bridge and, if not expended for such purposes, shall be paid to the City;

**d. Growth Management Funds.** The City and the County agree that the County collected \$492,332.00 in growth management funds from within the municipal boundaries of the City prior to incorporation for growth management services which were not provided to the City. The County agrees to expend, on City approved growth management projects, the sum of \$492,332.00 in growth management funds;

**3. Properties to be Transferred to the City by the County.** The County agrees to transfer all of its right title and interest in the following described properties to the City of Marathon, and the City agrees to accept the following described properties in "as is" condition, subject to all existing lease and/or management agreements presently encumbering the properties, to wit:

**a. The Marathon Teen Center,** together with all furniture, fixtures, equipment and improvements thereon belonging to, and transferable by, the County. The County agrees to provide the City with an inventory of any furniture, fixtures and equipment situated thereon which is to be transferred to the City;

**b. The Marathon Jaycees Building,** together with all furniture, fixtures, equipment and improvements thereon belonging to, and transferable by, the County. The County agrees to provide the City with an inventory of any furniture, fixtures and equipment situated thereon which is to be transferred to the City;

**c. The Marathon Yacht Club ,** together with the contiguous submerged land and County owned parking facilities;

**d. The Florida Keys Marina at Marathon,** together with all furniture, fixtures, equipment and improvements thereon belonging to the County. The City assumes all of the County's obligations under the MEDC-County Agreement. The County further agrees to convey to the City all County owned submerged land within the confines of Boot Key Harbor and any submerged land leases between the State of Florida and the County pertaining to submerged lands within the confines of Boot Key Harbor; and the City and County will cooperate in the completion of all pending grants for the Marina area.



**e. The Marathon Community Park,** together with all fixtures, equipment and improvements situated thereon and all parking facilities associated therewith. The County, joined by the City as Co-Plaintiff, will continue with the pending condemnation litigation regarding Phase II of the Park. The County will complete the acquisition of that additional parcel, with any Judgment paid from County infrastructure tax revenues. Upon acquiring the Phase II property, the County will convey that parcel to the City, and the City will be responsible for the development of Phase II at its own expense. The County's conveyance will be subject to a deed restriction prohibiting the charging of any admission fee to Monroe County residents, and requiring the Park to be operated in conformity with FCT (Florida Community Trust) requirements.

**4. Crawl Key.** The County agrees to transfer or lease to the Florida Keys Aqueduct Authority a sufficient portion of its real property on Crawl Key for purposes of constructing a central wastewater treatment plant and water re-use facility for the City of Marathon.

**5. Boot Key Bridge.** The County will convey to the City, and the City will immediately accept, the Boot Key Bridge. The County will pay up to \$1,000,000 for Boot Key Bridge repairs identified as necessary by joint report of the City's and County's Engineers.

**6. Solid Waste.** The City agrees to increase its efforts to collect its solid waste fees from its citizens, and will pay its indebtedness to the County in an expeditious manner.

**7. Form of Conveyances.** All properties to be transferred to the City will be conveyed in accordance with the requirements of Florida Law. The County will make every effort to locate and deliver to the City any and all surveys, title abstracts, deeds of conveyance, grants of easements, title insurance policies, building records, building plans, engineering plans and specifications, leases, management agreements, policies of insurance, maintenance records, environment reports and every other document of any nature whatsoever in the possession of the County which, in any manner, tends to establish the ownership interests of the County in each property to be conveyed and the limitations imposed thereon.

**8. Pro-ration of Rents and Expenses.** All rents and expenses associated with the properties to be conveyed shall be pro-rated as of the date of transfer of each property. The City and the County agree that the properties to be conveyed hereunder



may be conveyed separately or in a single transaction so as not to allow a problem with one conveyance to impede the remainder of the conveyances.

**9. Fund Balances.** The City of Marathon hereby waives any and all right which it has, or may have, to receive any portion of any other fund balance held by the County by virtue of the receipt of any State Revenue Sharing Funds or taxes collected prior to the incorporation of the City.



...KOLHAGE, Clerk

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By

George Neugent, Mayor/Chairperson

Approved as to form and  
Legal sufficiency

By

County Attorney

Date May 16, 2001

(SEAL)  
Attest: Clerk

By

Katherine V. Selcham

CITY OF MARATHON, FLORIDA

By

Robert K. Miller, Mayor

Approved as to form and  
Legal sufficiency

By

City Attorney

Date October 9, 2001

JdconCOMmou5/17

FILED FOR RECORD  
2001 OCT 16 PM 1:51  
DANNY L. KOLHAGE  
CLK. CIR. CT.  
MONROE COUNTY, FLA.